

## REMARKS

Applicant notes with appreciation, in the Office Action of October 17, 2008, claims 5, 9, 12, 21 and 28 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, claim 29 was rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In addition, claims 1, 2, 18 and 19 were rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 25 and 31 were also rejected under 35 U.S.C. 112, second paragraph. Furthermore, claims 1-4, 6, 8, 10, 17-20, 22 and 26 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent App. Pub. No. 2002/0057808 A1 (“Goldstein”). Claims 7, 11, 16 and 27-29 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Goldstein in view of U.S. Patent No. 6,157,670 (“Kosanovic”), U.S. Patent No. 5,553,134 (“Allen et al.”) or Official Notice.

With respect to the rejection of claim 29 under 35 U.S.C. 101, Applicant has canceled claim 29, and thus, the rejection of claim 29 is no longer applicable.

With respect to the rejections of claims 25 and 31 under 35 U.S.C. 112, second paragraph, Applicant has canceled claim 31, and thus, the rejection of claim 31 is no longer applicable. Applicant has also amended claim 25 so that claim 25 now depends on claim 24. Since claim 24 recites “*a fifth, intermediate, range,*” there is now antecedent basis for the limitation “*the fifth range*” in claim 25. Thus, Applicant respectfully requests that the Section 112, second paragraph, rejection of claim 25 be withdrawn.

With respect to the rejections of claims 1, 2, 18 and 19 under 35 U.S.C. 112, second paragraph, Applicant has amended these independent claims to essentially remove the limitation of “*wherein the average gain factor for the first range is greater than the average gain factor for the second range.*” As such, the rejections of

claims 1, 2, 18 and 19 under 35 U.S.C. 112, second paragraph, are no longer applicable.

5 In addition, Applicant has rewritten the “objected to” claim 5 in independent form by amending the base claim 1 to include all of the limitations of claim 5. As a result, claim 5 has been canceled. Similarly, Applicant has rewritten the “objected to” claims 21 and 28 in independent form by amending the respective base claims 18 and 27 to include all of the limitations of claim 21 and 28, respectively. As a result, claims 21 and 28 have been canceled. The independent claim 2 has been amended in a similar manner as the independent claim 1. The independent claim 19 has been amended in a similar manner as the independent claim 18. Applicant has also rewritten the “objected to” claims 9 and 12 in independent form by adding new independent claims 32 and 32, respectively, including all of the limitations of the base claim 1.

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In view of the claim amendments, Applicant respectfully submits that the pending claims 1-4, 6-20, 22-27, 30, 32 and 33 are now in condition for allowance. A notice of allowance is earnestly solicited.

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Respectfully submitted,  
Christophe Marc Macours

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Date: January 21, 2009

By: /thomas h. ham/  
Thomas H. Ham  
Registration No. 43,654  
Telephone: (925) 249-1300